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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 FREDRICK MARTINEZ,

Case No. 3:13-cv-00593-MMD-VPC

10 Petitioner,

ORDER

11 v.

12 STATE OF NEVADA, et al.,

13 Respondents.

14 This action was opened by the Clerk of Court as an action for a writ of habeas
15 corpus by a state prisoner, pursuant to 28 U.S.C. § 2254. Petitioner has submitted an
16 application to proceed *in forma pauperis*. (Dkt. no. 1.) Petitioner has also submitted a
17 motion for the appointment of counsel. (Dkt. no. 1-1.) However, no petition has been
18 submitted. Unless an issue of federal constitutional or statutory law is implicated by the
19 facts presented, there is no cognizable claim under federal habeas corpus. *Estelle v.*
20 *McGuire*, 502 U.S. 62, 68 (1991). As there is no operative pleading – no petition – filed
21 in this action, it will be dismissed without prejudice to filing a petition as a new action.

22 It is therefore ordered that this action is dismissed without prejudice for failure to
23 present a habeas corpus petition.

24 It is further ordered that all pending motions, including the application to proceed
25 *in forma pauperis* (dkt. no 1) and the motion for appointment of counsel (dkt. no. 1-1)
26 are denied.

27 It further is ordered that the Clerk of Court shall send petitioner two (2) copies
28 each of an application form to proceed *in forma pauperis* for incarcerated persons and a


1 noncapital Section 2254 habeas petition form, and one (1) copy of the instructions for
2 each form.

3 It is further ordered that petitioner may file a petition and *in forma pauperis*
4 application in a new action, but he may not file further documents in this action.

5 It is further ordered that the Clerk of the Court shall enter judgment accordingly.

6 It is further ordered that a certificate of appealability is denied. Reasonable jurists
7 would not find the dismissal of the improperly-commenced action without prejudice to be
8 debatable or wrong.

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10 DATED THIS 3rd day of February 2014.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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